

EXHIBIT A

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

DAVID AND NATASHA WIT, et al.,
Plaintiffs,

v.

UNITED BEHAVIORAL HEALTH,
Defendant.

Case No. 3:14-CV-02346-JCS

**STIPULATION CONCERNING
DISCOVERY RELATING TO WHETHER
CLASS MEMBERS' PLANS ARE
GOVERNED BY ERISA**

Judge: Hon. Joseph Spero
Courtroom: G

GARY ALEXANDER, et al.,
Plaintiffs,

v.

UNITED BEHAVIORAL HEALTH,
Defendant.

Case No. 3:14-CV-05337-JCS

1 WHEREAS, on March 14, 2016, the parties entered into a Joint Stipulation Concerning
2 Sampling Methodology which describes (in paragraphs 7-9 and 18-19) the method by which
3 UBH created the spreadsheets attached to that Joint Stipulation as Exhibits C and E.

4 WHEREAS, Plaintiffs attached Exhibits C and E to their Motions for Class Certification
5 in each of the above-captioned cases, which the Court granted on September 19, 2016.

6 WHEREAS, on January 11, 2017, UBH supplemented Exhibits C and E by producing two
7 new spreadsheets (attached hereto as Exhibits 1 and 2), using the same methodology, to include
8 adverse benefit determinations made between April 17, 2015 and December 20, 2016 (as to
9 Exhibit C) and between May 20, 2015 and December 20, 2016 (as to Exhibit E). Exhibits C and
10 E, as supplemented on January 11, 2017, will hereinafter be referred to as the "Updated ABD
11 Spreadsheets."

12 WHEREAS, UBH has represented to Plaintiffs that there is no automated methodology by
13 which UBH can remove from the Updated ABD Spreadsheets adverse benefit determinations
14 issued pursuant to welfare benefit plans ("Plans") that are *not* governed by the Employee
15 Retirement Income Security Act of 1974, 29 U.S.C. §§ 1102 *et seq.* ("ERISA").

16 WHEREAS, on November 30, 2015, Plaintiffs served on UBH Plaintiffs' Third Set of
17 Requests for Production of Documents in the above-captioned cases, which (in Request No. 12)
18 called for UBH to produce all agreements and contracts between UBH and any Plan or any of
19 UBH's Corporate Affiliates, "including but not limited to administrative services agreements,
20 concerning Benefit Claim administration and/or how UBH will be compensated for its services."
21 The parties agreed that UBH would produce a sample of agreements, which UBH produced,
22 subject to Plaintiffs' right to seek additional agreements and contracts.

23 WHEREAS, on December 11, 2015, Plaintiffs served on UBH Plaintiffs' First Set of
24 Requests for Admission in the above-captioned cases, which (in Request No. 1) called for UBH
25 to "[a]dmit that UBH keeps track of which Plans are ERISA Plans," and UBH objected to and
26 denied that Request for Admission.

27 WHEREAS, on September 21, 2016, Plaintiffs served on UBH Plaintiffs' Third Set of
28 Interrogatories in the above-captioned cases, which (in Interrogatory No. 11) called for UBH to,

1 “[w]ith respect to each claimant listed on Exhibits C or E to the parties’ Joint Stipulation
2 Concerning Sampling Methodology, Identify the Federal Employer Identification Number
3 (“EIN”) associated with such claimant’s employer-sponsored health benefit plan,” and UBH
4 objected to that Interrogatory.

5 WHEREAS, on December 22, 2016, Plaintiffs served on UBH Plaintiffs’ Fifth Set of
6 Interrogatories in the above-captioned cases, which (in Interrogatory No. 17), called for UBH to,
7 “[w]ith respect to each claimant listed on the denial lists UBH produced in response to Plaintiffs’
8 Interrogatory No. 1 (including any supplements thereto), state whether UBH has information
9 indicating whether the member’s Plan is governed by ERISA and, if so, whether that information
10 indicates that the member’s Plan is governed by ERISA,” and UBH objected to that Interrogatory.

11 WHEREAS, on December 22, 2016, Plaintiffs served on UBH Plaintiffs’ Fifth Set of
12 Requests for Production of Documents in the above-captioned cases, which (in Request No. 2)
13 called for UBH to produce “[a]ll Documents in UBH’s possession containing any representation,
14 in any form or manner, by any person, to the effect that any Class Member’s Plan is or was
15 governed by ERISA,” which request explicitly included “any employer application relating to any
16 Class Member’s Plan and any agreement with any such Plan or Plan Sponsor, insofar as such
17 Document contains information about whether the Plan is or was governed by ERISA,” and UBH
18 objected to that Request.

19 WHEREAS, on December 29, 2016, Plaintiffs’ counsel sent an email to counsel for
20 Defendant requesting that, in further response to Plaintiffs’ Request for Production No. 12 (of Set
21 Three) (served on November 30, 2015), Defendant produce all of its agreements with its “carve-
22 out” customers.

23 WHEREAS, on January 23, 2017, Plaintiffs served on UBH notice of third-party
24 subpoenas to United Healthcare Insurance Company, Inc. and Oxford Health Plans LLC seeking
25 information about plans administered by UBH and Plaintiffs thereafter served those subpoenas;

26 WHEREAS, Defendant’s and Plaintiffs’ counsel have met and conferred on numerous
27 dates regarding Plaintiffs’ discovery requests described above. In those discussions, Plaintiffs
28 have informed Defendant that the requests described above seek (among other things)

1 information to establish that each of the members identified in the Updated ABD Spreadsheets
2 was a member of a Plan that was subject to ERISA when Defendant issued the adverse benefit
3 determination(s) that is/are at issue in the above-captioned cases.

4 WHEREAS, in lieu of UBH serving substantive responses and/or producing documents in
5 response to the discovery requests described above, the parties, through their respective counsel,
6 have agreed to this stipulation as set forth below.

7 WHEREAS, the parties, acting in good faith, intend by this Stipulation to meaningfully
8 narrow the issues genuinely in dispute and to reduce the burden of discovery for all parties and
9 for third parties; and

10 WHEREAS, the parties, through their respective counsel, agree that entering into this
11 stipulation would be beneficial to simplify, streamline and expedite fact discovery in the above-
12 captioned cases:

13 **IT IS HEREBY STIPULATED AND AGREED**, subject to the approval of the Court:

14 1. By March 22, 2017, UBH will identify for Plaintiffs each Plan appearing on one or
15 more of the Updated ABD Spreadsheets that UBH contends was not subject to ERISA on the date
16 the adverse benefit determination reflected on the spreadsheet was issued (hereafter, the
17 "Challenged Plans"). "Identify" for purposes of this paragraph means to provide the full name of
18 the Plan, any account or group numbers associated with the Plan, and a mailing address for the
19 Plan.

20 2. Each adverse benefit determination issued pursuant to a Challenged Plan will be
21 removed from the Updated ABD Spreadsheets. On March 31, 2017, the parties will execute a
22 Stipulation that each Plan appearing on the Updated ABD Spreadsheets, as so amended, was
23 governed by ERISA at all times relevant to the above-captioned cases.

24 3. By April 14, 2017, UBH will produce, with respect to each Challenged Plan,
25 documentation demonstrating that the Challenged Plan was not governed by ERISA at the time of
26 the related adverse benefit decisions relating to the Challenged Plan. If a Challenged Plan was
27 sponsored by a federal, state or local government, Indian tribal entity, or church, UBH's
28 production shall include (but will not necessarily be limited to) the Summary Plan Description or

1 Certificate of Coverage for the Challenged Plan. If a Challenged Plan was sponsored by any
2 employer or entity other than a federal, state or local government, Indian tribal entity, or church,
3 UBH's production shall include (but will not necessarily be limited to) the following documents,
4 to the extent that UBH possesses them: (a) the Summary Plan Description or Certificate of
5 Coverage for the Challenged Plan; (b) any employer group application submitted in connection
6 with such Plan; and/or (c) any contracts between UBH and the Plan or Plan Sponsor. If, however,
7 any one document of these types of documents is sufficient, by itself, to show that a Challenged
8 Plan is not governed by ERISA, UBH will only be obligated, under this Paragraph, to produce
9 that document.

10 4. By May 3, 2017, Plaintiffs will identify for UBH each Challenged Plan that
11 Plaintiffs contend is subject to ERISA and a short statement as to the basis for that contention
12 (hereafter, the "Disputed Plans"). For each such Disputed Plan, Plaintiffs will be permitted to
13 take discovery relating to whether the Disputed Plan is subject to ERISA. Discovery relating to
14 Disputed Plans shall not be subject to the fact or expert discovery deadlines, but instead shall be
15 completed, including the issuance and enforcement of third-party subpoenas, by no later than
16 September 26, 2017.

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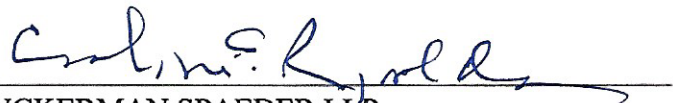
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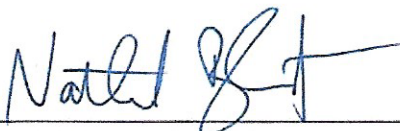
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1 5. By July 16, 2017, if the parties agree that any Disputed Plan is subject to ERISA,
2 the parties will execute a Stipulation that each of those formerly Disputed Plans was governed by
3 ERISA at all times relevant to the above-captioned cases. Notwithstanding this provision, UBH
4 is not obligated to agree that any Disputed Plan is subject to ERISA.

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6 Dated: February 8, 2017

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